

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

BRADY C. HARTMAN, M. D.

Respondent.

NO. D-1963

L-14507

NOTICE OF NON-ADOPTION OF PROPOSED DECISION

(Pursuant to Section 11517 of the Government Code)

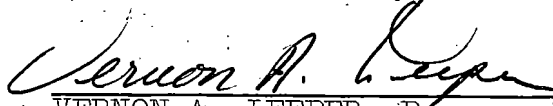
TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality of the Board of Medical Quality Assurance of the State of California has decided not to adopt the attached proposed decision filed herein by the duly assigned Administrative Law Judge, Marguerite C. Geftakys, and dated March 29, 1978. You are also notified that the Division of Medical Quality will decide the case upon the record, including the transcript and without the taking of additional evidence. You are hereby afforded the opportunity to present written argument to the Division of Medical Quality, if you desire to do so, by filing such written argument with the Division at its office at 1430 Howe Avenue, Sacramento, California 95825, and the same opportunity is afforded the Attorney General of the State of California.

You will be notified of the date for submission of such argument when the transcript of the administrative hearing becomes available.

DATED: JUNE 12, 1978

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE


VERNON A. LEEPER, Program Manager
Enforcement Unit

BEFORE THE DIVISION OF MEDICAL QUALITY

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STATE OF CALIFORNIA

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| In the Matter of the Accusation) | |
| Against:) | |
| |) No. D-1963 |
| BRADY C. HARTMAN) | |
| Certificate No. G-18014,) | L-14507 |
| |) |
| Respondent.) | |
| _____) | |

PROPOSED DECISION

This matter came on regularly for hearing before a quorum of the Medical Quality Review Committee of the Fourteenth District of the Division of Medical Quality of the Board of Medical Quality Assurance at San Diego, California, on August 5, 1977, at the hour of 9:00 a.m. The quorum was constituted by the following panel members: Robert Hamburger, M.D.; Merkel J. Harris; Paula Liska, Ph.D. Marguerite C. Geftakys, Administrative Law Judge of the Office of Administrative Hearings, State of California, presided. Daniel J. Weston, Deputy Attorney General, represented the complainant. Respondent Brady C. Hartman was present at all times throughout the hearing and represented by Bruce A. Ray, Attorney at Law. Evidence both oral and documentary was received and the matter continued for the taking of further evidence.

Thereafter, the matter was heard on January 5, 1978, at San Diego, California, at the hour of 9:00 a.m. Pursuant to reassignment of the matter by the Division, Marguerite C. Geftakys, Administrative Law Judge, did, over respondent's objection, hear the matter alone. Evidence both oral and documentary was received and the matter submitted pending submission of written argument. Said argument having been received and marked Exhibits Q on behalf of the respondent and 12 on behalf of the complainant. The matter is now submitted and the Administrative Law Judge makes the following findings of fact:

I

Complainant Joseph P. Cosentino, M.D., was the Acting Executive Director of the Board of Medical Quality Assurance of the State of California, hereinafter referred to as the "Board", and made the Accusation herein solely in such official capacity and not otherwise.

II

A. Respondent, Brady C. Hartman, on or about March 11, 1970, was issued Physician's and Surgeon's Certificate No. G-18014 by the Board to practice medicine and surgery in the State of California and at all times mentioned herein respondent was and now is licensed by the Board to practice medicine and surgery in this state.

B. Respondent's certificate number G-18014 was issued after he successfully took and passed the physician's and surgeon's examination administered by the Board's predecessor, the Board of Medical Examiners.

C. Following licensure in California, and after successfully completing examinations administered by the Board of Medical Examiners, State of Florida, hereinafter referred as the "Florida Board", respondent was granted the privilege of practicing medicine in that state.

III

On April 9, 1976, the State Board of Medical Examiners of Florida, Department of Professional and Occupational Regulation, vacated its order of probation and revoked respondent's Florida license to practice medicine, license number 15988, for those reasons more particularly set forth in its Order adopting as its own, the findings of fact and conclusions of law of the Recommended Order of James E. Bradwell, Hearing Officer, Division of Administrative Hearings, State of Florida.

IV

A. On July 18, 1970, respondent was granted a license to practice medicine in the State of Florida.

B. Following a hearing on January 15, 1971, wherein respondent was found guilty of acute alcoholism and unable to practice medicine with reasonable skill and safety to patients, his license was suspended, effective January 29, 1971, for a period of three years. Imposition of suspension was stayed upon certain terms and conditions.

C. Thereafter, on or about July 23, 1971, the Florida Board suspended respondent's license for a period of one year and indefinitely thereafter until he could demonstrate his

ability to practice medicine and surgery competently.

D. On July 31, 1972, respondent's license was reinstated subject to the following conditions:

"1. That your license to practice medicine and surgery in the State of Florida is placed on a probationary status for a two (2) year period beginning with the date of this Order.

2. That during the period of your probation you shall make a personal appearance at each semi-annual meeting of the State Board of Medical Examiners. Notification of the time and place will be sent to you in advance of each meeting.

3. That during your probation period you shall demonstrate the type of exemplary conduct required of a duly licensed physician in the State of Florida.

4. That until further ordered by this Board your practice shall be limited to your continued work with the Palm Beach County Health Department in the area of their comprehensive alcoholism programs.

5. That during the period of your probation, you shall continue your medical treatment under the direction of Harry A. Schroer, M.D., and it shall be your responsibility to insure that the State Board of Medical Examiners receives periodic reports from Dr. Schroer at sixty day intervals."

E. As required by condition number 2, above, and pursuant to notice by the Florida Board, respondent made personal appearances before the Board. On occasion and without prior notice of a charge of violation of probation, evidence of such violation was received and the terms and conditions of his probation were changed and extended.

F. On July 23, 1975, the Florida Board issued its administrative complaint and notice to show cause why his license to practice medicine should not be revoked based on a history of acute alcoholic problems and violation of the terms of his probation. The Florida Board did find, inter alia, that respondent's act of driving a motor vehicle while intoxicated was a violation of the terms of his probation and grounds for revocation of his license. The Florida Board considered but was not persuaded by respondent's defense that said conduct did not occur during a time he was treating patients or otherwise providing medical care to patients.

G. Respondent thereafter filed a Petition for Certiorari with the Florida District Court of Appeal contending that the Florida Board's failure to give proper notice of the alleged violation of probation and an oral Order of Extension of his probation was violative of his right to due process under the Constitution of the United States and the State of Florida. The Florida District Court of Appeal denied respondent's writ.

H. Thereafter, on October 27, 1976, in the Supreme Court of Florida, in a matter entitled "Brady Chambers Hartman, M.D., Petitioner v. State Board of Medical Examiners of Florida, Respondent", respondent filed a Petition for Writ of Certiorari from the District Court of Appeal, First District. On April 7, 1977, his petition was denied. The sole point of law set forth in respondent's petition was as follows:

"POINT OF LAW INVOLVED

IS AN ORDER OF AN ADMINISTRATIVE AGENCY VALID WHEN IT FAILS TO COMPLY WITH THE MANDATORY STATUTORY REQUIREMENTS AS TO PROCEDURE AND IS RENDERED IN VIOLATION OF LICENSEE'S RIGHT TO DUE PROCESS WHICH IS GUARANTEED TO HIM UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF FLORIDA?

(The District Court of Appeal, First District, by its denial of Petitioner's Writ of Certiorari from the State Board of Medical Examiners without opinion answered the above question in the affirmative.)"

V

Respondent has made significant progress towards recovery from his illness of alcoholism as manifested by his present life situation and personal motivation. His alcoholism was triggered by severe stress caused by the deaths of his father and mother and aggravated by the physical infidelity of his first wife, the mother of his only child. Respondent and she separated in 1967 and the marriage was finally terminated in 1971. His former wife has remarried and resides in Massachusetts with their son. Respondent also remarried in February 1975 and enjoys a compatible and satisfactory relationship with his present wife whom he feels is supportive of him. Respondent contributes regularly to the financial support of his son, now fifteen years old.

Respondent's first priority in life now is his continued abstinence from alcohol. In furtherance of this goal, he is actively involved in an Alcoholics Anonymous program with a group of professionals, which includes doctors and lawyers, which meets twice a week. He enjoys a very good and beneficial

relationship with his surrogate sponsors with whom he is in constant contact. Significantly, respondent has not had an alcoholic drink since March 8, 1977.

Respondent's evidence established that he is a binge drinker, and not otherwise, and that he has never consumed alcohol nor been intoxicated while treating patients. Neither has he gone on a binge without first determining there was a doctor available to treat his patients, if necessary. Typically, respondent would sequester himself in his bedroom with a supply of alcohol and drink for a few days; he would then have himself admitted to an institution for detoxification and, having done this, he would abstain totally for a long period of time. It is highly improbable that respondent will convert to any other type drinker.

VI

Respondent's second priority in his life is the retention of his license to practice medicine. Since April 1976, he has been the Medical Director of Mid-City Community Clinic and, as of May 1976 the Medical Director of the Beach Area Community Clinic, both of San Diego. He finds his current practice to be without stress but would eventually like to practice with a small group without obstetrics or surgery. Respondent has taken the examination for certification by the American Board of Family Practice and was awaiting the results at the time of hearing of this matter. Furthermore, he has completed more than the required amount of continuing education courses. Respondent has also taught a nurse practitioner course at the University of California, San Diego; has been a clinical instructor in Community and Family Medicine at the School of Medicine, University of California, San Diego; and has been a clinical instructor at the School of Nursing, at University of California, Los Angeles.

Respondent is held in very high regard for his competency and professionalism by his peers and his fellow employees at the Mid-City and Beach Area Community Clinics. Based on his motivation, and present personal commitments, recidivism by respondent is highly improbable.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

No cause exists for the suspension or revocation of respondent's license pursuant to the provisions of section 2363

of the Business and Professions Code.

II

It was not established that the revocation of respondent's license by the Florida Board was invalid in that it was not established that the terms of probation or the imposition of probation were invalid.

III

It was not established that section 2363 of the Business and Professions Code is unconstitutional in that it was not established it constitutes an unconstitutional delegation of power.

IV

Respondent's evidence established that he is not now unfit to practice medicine by reason of his previous use of alcoholic beverages.


* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Accusation against Brady C. Hartman, M.D., is hereby dismissed.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter as a result of the hearing had before me on the above dates at San Diego, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.

DATED: March 29, 1978


MARGUERITE C. GEFTAKIS
Administrative Law Judge
Office of Administrative Hearings

MCG:jm